

REDACTED
DIRECT TESTIMONY
of

Rochelle Langfeldt
Financial Analyst

Finance Department
Financial Analysis Division
Illinois Commerce Commission

Petition for Approval of
Agreement with an Affiliated Interest

Central Illinois Light Company

Docket Nos. 00-0815/00-0816
(Consolidated)

March 30, 2001

1 **1. Q. Please state your name and business address.**

2 A. My name is Rochelle Langfeldt and my business address is 527 East
3 Capitol Avenue, Springfield, Illinois 62701.

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5 **2. Q. By whom are you employed and in what capacity?**

6 A. I am employed by the Illinois Commerce Commission (“Commission”) as a
7 Financial Analyst in the Finance Department of the Financial Analysis
8 Division.

9

10 **3. Q. Please state your educational background and work experience.**

11 A. In May 1998, I received a Bachelor of Arts degree in Finance from Illinois
12 College in Jacksonville, Illinois. In May 2000, I received a Master of
13 Business Administration degree from the University of Illinois at
14 Springfield. I have been employed by the Commission since June 2000.

15

16 **4. Q. What is the purpose of your testimony in this proceeding?**

17 A. The purpose of my testimony is to examine financial aspects of the Tolling
18 Agreement, Consent Agreement, Receivables Assignment, and Service
19 Agreement, all of which are required to secure financing for AES Medina
20 Valley Cogen, L.L.C. (“Medina”), to assess whether these provisions of
21 the agreements are in the public interest and convenience the public as
22 set forth in Sections 7-101 and 7-102 of the Public Utilities Act (“Act”).

23

24 **5. Q. Please summarize your conclusions.**

25 A. Under Section 16.2 of the Tolling Agreement, Central Illinois Light Com-
26 pany (“CILCO” and “Company”) would be obligated to pay off the
27 outstanding project debt and related expenses in the event that CILCO
28 terminates the Tolling Agreement with its affiliate, Medina, a subsidiary of
29 AES Corporation, CILCO’s parent company. Excepting a 60-day notice
30 requirement, nothing limits the circumstances under which CILCO could
31 terminate the Tolling Agreement; therefore, CILCO’s affiliates may require
32 CILCO to terminate the Tolling Agreement when it is in the best interests
33 of the affiliate but not in the best interest of CILCO or its customers. As
34 such, I recommend that (1) CILCO be required to attain authorization from
35 the Commission before terminating the Tolling Agreement with Medina
36 and (2) upon terminating the agreement, CILCO should have the option to
37 acquire ownership in Medina, unless Caterpillar first cancels the Service
38 Agreement and pays a penalty to CILCO at least equal to the amount
39 CILCO would owe if it terminated the Tolling Agreement.

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41 **6. Q. Please describe the proposed transaction in this proceeding.**

42 A. CILCO caused the creation of an affiliated corporation, Medina, a wholly
43 owned subsidiary of AES Corporation, CILCO’s parent company. Medina
44 has undertaken to construct and operate a cogeneration facility on
45 premises leased to Medina by Caterpillar, Inc. (“Caterpillar”) at the
46 Mossville Performance Engine Products Division plant. The cogeneration

47 facility is funded through non-recourse financing (“Project Debt”);
48 therefore, the lenders would have no recourse to CILCO or to AES if
49 Medina fails to pay its lenders.¹ CILCO and Medina have negotiated a
50 Tolling Agreement for the operation of the cogeneration plant and the pro-
51 vision of support services by CILCO for the cogeneration facility until July
52 1, 2021.

53
54 Under the Tolling Agreement, CILCO would provide the natural gas, water
55 and condensate required for the operation of the cogeneration facility.
56 Medina would generate electricity and would provide steam heat and
57 chilled water service that would be sold to CILCO and resold to Caterpillar
58 under a competitive service contract (“Service Agreement”).

59
60 CILCO requests authorization and approval from the Commission for
61 CILCO to enter into and perform the obligations of two related agree-
62 ments: the Acknowledgement and Consent Agreement (“Consent Agree-
63 ment”) and the Caterpillar Receivables Assignment and Consent Agree-
64 ment (“Receivables Assignment”). Medina’s lenders require that CILCO
65 acknowledge and consent, by executing the Consent Agreement, that the
66 Tolling Agreement has been assigned by Medina to the lenders for secu-
67 rity purposes, and that CILCO agrees to certain remedies in favor of

¹“Non-recourse financing” refers to a loan transaction in which the only collateral securing the lender’s interest is the project’s assets and other specific potential revenue assignments established via legal documents (Company response to Staff data request JF-1.07).

lenders in the event of bankruptcy or default by Medina. Medina's lenders further require that CILCO execute the Receivables Assignment, assigning to Medina and its lenders certain payments to become due to CILCO from Caterpillar under the competitive services contract relating to the output of the cogeneration facility. The Receivables Assignment requires payment to Medina and Medina's lenders only in the event of default by CILCO.

7. Q. Please summarize the terms of the Receivables Assignment.

A. As security for the obligations of CILCO under the Tolling Agreement, CILCO has agreed to collaterally assign to Medina its right to receive pass-through receivables from Caterpillar under the Service Contract.² As collateral security for the obligations of CILCO under the Tolling Agreement, CILCO grants Medina a security interest in CILCO and grants Medina a first priority interest in the pass-through receivables. In turn, Medina grants its lenders a first priority interest in its rights to the pass-through receivables. In summary, if CILCO would default, under the terms of the Tolling Agreement, the Receivables Assignment requires CILCO to assign the amounts due and owing to it by Caterpillar to Medina. In turn, Medina assigns this amount to its lenders.

²"Pass-through receivables," as defined in the Receivables Assignment, are the payments due and owing to CILCO, by Caterpillar.

89 **8. Q. Do you oppose the Receivables Assignment between Medina, its**
90 **lenders and CILCO?**

91 A. No. The Receivables would be assigned in the event of default by CILCO
92 rather than an affiliate. As such, no increase in CILCO's risk or cost of
93 capital would result under the Receivables Assignment.

94
95 **9. Q. Under the terms of the Consent Agreement, what remedies has**
96 **CILCO agreed to provide in favor of Medina's lenders in the event of**
97 **bankruptcy or default by Medina?**

98 A. CILCO agrees to the pledge and assignment of Medina's rights, title and
99 interest to the Tolling Agreement. If Medina should default, the lenders
100 would be entitled to do the following: (1) pay all sums due and to perform
101 Medina's acts, duties, or obligations under the Tolling Agreement; (2)
102 cure any termination event;³ and, (3) assume or cause a purchaser to
103 assume Medina's obligations.⁴ In the event of Medina's default, CILCO
104 agrees to (1) execute a new Tolling Agreement with the lenders (or the
105 lender's nominee) at the same terms and for the same time period if the
106 original Tolling Agreement is unacceptable pursuant to bankruptcy
107 proceedings and (2) pay amounts due to Medina to a depository agent.⁵

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³"Termination event," as defined in the Acknowledgement and Consent Agreement, is an event or condition that would entitle either CILCO or Medina to terminate or suspend its obligations under the Tolling Agreement.

⁴Acknowledgement and Consent Agreement, Sections 3(a) and (c) and 5.

⁵Acknowledgement and Consent Agreement, Sections 4(a) and 6.

109 **10. Q. Will CILCO receive compensation from Medina for providing such**
110 **remedies?**

111 A. No. CILCO would not receive compensation from Medina for providing
112 such remedies. However, CILCO would be made whole with regard to the
113 services to be provided through the Tolling Agreement in the event such
114 remedies are invoked.⁶

116 **11. Q. Do you oppose the Consent Agreement between Medina, its lenders**
117 **and CILCO?**

118 A. No. I do not discern any increase in CILCO's risk or cost of capital under
119 the Consent Agreement. As I understand it, the Consent Agreement only
120 binds CILCO to do business under the same terms and conditions of the
121 Tolling Agreement with whomever lenders nominate to operate the facility.

123 **12. Q.** [REDACTED]
124 [REDACTED]

125 A. [REDACTED]
126 [REDACTED]
127 [REDACTED]
128 [REDACTED]

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⁶Company response to Staff data request JF-1.02.

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170 **13. Q. Under what circumstances may CILCO terminate the Tolling Agree-**
171 **ment?**

172 A. Under the terms of the Tolling Agreement, Section 16.2, CILCO may ter-
173minate the Tolling Agreement at any time upon 60 days prior written
174notice to Medina. Medina shall accept in full satisfaction and discharge of
175all obligations owed to Medina with respect to the Tolling Agreement an

amount equal to the sum of: (1) all amounts due for energy related service provided, (2) the amount required to repay in full the principal and accrued interest on all Project Debt outstanding, and (3) the amount required to pay all interest period breakage costs, prepayment premiums and penalty, interest rate swap breakage costs and other similar termination payments.⁷

In addition, under the terms of Section 16.3, CILCO may purchase the facility for an amount equal to the sum of: (1) all amounts due for energy related service provided and (2) the greater of (a) the amount required to repay in full the principal and accrued interest on all Project Debt outstanding and (b) the fair market value of the facility.⁸

14. Q. Why must CILCO repay in full the principal and accrued interest on all Project Debt of Medina in order to terminate the Tolling Agreement?

A. Medina's sole customer will be CILCO. Not only does CILCO provide the raw materials to Medina but CILCO is also Medina's only sales conduit for its products. As such, Medina would be unable to meet its Project Debt obligations if CILCO terminates the Tolling Agreement.⁹

⁷Tolling Agreement by and between AES Medina Valley Cogen, L.L.C. and Central Illinois Light Company, Section 16.2.

⁸Tolling Agreement by and between AES Medina Valley Cogen, L.L.C. and Central Illinois Light Company, Section 16.3.

⁹Company response to Staff data request JF-1.03.

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197 **15. Q. Other than those described in Sections 16.2 and 16.3 of the Tolling**
198 **Agreement, are there any circumstances under which CILCO would**
199 **assume the loan between Medina and its lenders?**

200 A. No. The circumstances described in Sections 16.2 and 16.3 of the Tolling
201 Agreement are the only circumstances under which CILCO would assume
202 the loan between Medina and its lenders.¹⁰

203

204 **16. Q. Do you oppose any provisions in either the Tolling Agreement or the**
205 **Service Agreement?**

206 A. Yes. In Section 16.2 of the Tolling Agreement, CILCO is required to pay
207 the outstanding Project Debt, plus related expenses without acquiring an
208 ownership in Medina. Due to the affiliate relationships between AES (i.e.,
209 the parent company), CILCO, and Medina, it is possible that terminating
210 the agreement, per Section 16.2 of the Tolling Agreement, might be in the
211 parent company's best interest while it may not be in the best interest of
212 CILCO. Nonetheless, there are no provisions in the Tolling Agreement
213 that would prohibit the parent company from having CILCO terminate the
214 agreement for the benefit of either the parent company or Medina.
215 Therefore, I oppose the Tolling Agreement between Medina and CILCO.

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¹⁰Company response to Staff data request RL-1.02.

217 **17. Q. What is your recommendation regarding the Tolling Agreement and**
218 **the Service Agreement?**

219 A. To protect the interests of CILCO and its customers, Section 16.2 of the
220 Tolling Agreement should be amended to require CILCO to attain authori-
221 zation from the Commission prior to terminating the Tolling Agreement.
222 Further, if CILCO is authorized by the Commission to terminate the
223 Tolling Agreement, and as a result is required to pay the outstanding
224 Project Debt, CILCO must have the option to acquire an ownership
225 interest in Medina that is proportionate with the termination payment
226 required of CILCO vis-a-vis the fair market value of Medina. However,
227 CILCO would not be required to obtain an ownership interest in Medina in
228 those situations in which Caterpillar terminates the Service Agreement
229 and pays a termination payment to CILCO equal to or greater than the
230 amount CILCO would owe for terminating the Tolling Agreement.

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232 **18. Q. Does this conclude your testimony?**

233 A. Yes, it does.